*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 21796 AND 28824 OF 1995

% 07-11-2006

W.P.No. 21796 of 1995

G. Ramakrishna Rao.

.....

Petitioner

Vs.

$ The UCO Bank, H.O. Personnel Dept, Calcutta. Rep., by the Chairman and the Managing Director and two others.

.....

Respondents

! Counsel for the petitioner: Sri B. Nalin Kumar

^ Counsel for respondents: Sri A. Srinivasarao

< Gist:

>Head Note

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[1] 1981(1) All Service Law Journal 188
2 1988(2) LLJ 370
31999(2) ALT 130
4 1983 (1) ALT 408
5 AIR 1993 SC 1916
6 2004(2) SCC 130
7 AIR 1954 SC 369
8 (1987)2 SCC 188
9 1994 Supp(3) SCC 424
10 (1992)2 SCC 299
11 (2001) 2 SCC 305
12 (2002) 3 SCC 641)
13 (2003) 4 SCC 59)
14 (1970) 2 SCC 458
15 (2001) 3 SCC 314
16 1995 Supp (3) SCC 202
17 Judgment in W.P.1368 of 1993 dated 17.8.1995
18 (2006)3 SCC 620
19 1962 Supp (3) SCR 713
20 AIR 1970 SC 214

[21] (1990(3) ALT 605

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NOS. 21796 AND 28824 of 1995

COMMON JUDGMENT:

Seeking a writ of mandamus to the respondents to permit him to rejoin service as a Scale III officer, to direct them to pay him full salary with effect from 1.4.1993 and to grant him all ancillary and attendant benefits or in the alternative to direct the respondents to pay him compensation of Rs.20.00 lakhs, W.P.No.21796 of 1995 is filed by the petitioner herein.

When W.P.No.21796 of 1995 was pending on the file of this Court, the first respondent, in exercise of the powers conferred under Regulation 19(1) and (2) of the UCO Bank (Officers') Service Regulations, 1979, issued proceedings dated 24.11.1995 retiring the petitioner from service with immediate effect and directed that he be paid an amount equivalent to three months substantive salary/pay and allowances last drawn by him. Seeking a writ of certiorari to quash the said proceedings dated 24.11.1995 and consequently permit him to rejoin service as a Scale III officer, to pay him full salary with effect from 1.4.1993 and grant him all ancillary and attendant benefits or in the alternative to direct the respondents to pay him compensation of Rs.20.00 lakhs, the petitioner filed W.P.No.28824 of 1995.

Facts, to the extent necessary, are that the petitioner, a graduate in commerce with C.A.I.I.B, was appointed as a clerk in the respondent bank on 20.7.1964. He was promoted to "D-Grade" officers cadre (Scale-I) on 1.12.1970 and thereafter as a 'C' Grade officer (Scale – II) on 1.4.1976. He was promoted as a Scale III officer on 1.7.1983. In 1986 he was appointed as an enquiry officer to enquire into the charges levelled against Sri S.S. Murthy who was then working as the Manager of the Sarojini Devi Road Branch, Secunderabad. On 18.6.1986, when the petitioner was returning home from office, acid was thrown on him which resulted in his face being completely disfigured and in loss of vision in both his eyes. Within an hour, the petitioner was rushed to Osmania General Hospital for treatment. For the next three years, till the end of September, 1989, the petitioner underwent 17 operations, necessitating his hospitalization for a period ranging between two to eight weeks each time. These operations were largely plastic surgeries for correction of the disfigured eyelids, lips, nose, neck and different portions of the face. The petitioner's efforts to have his vision restored, getting advanced treatment at reputed

medical institutions like Rajendra Prasad Eye Center of the All India Institute of Medical Sciences, New Delhi and the L.V. Prasad Eye Institute, Hyderabad were all in vain. The then Chairman and Managing Director of the 1st respondent – Bank visited the petitioner at his residence in the third week of August, 1986 to enquire about his health. The Officers' Association submitted several memoranda, to the Chief Executive Director of the bank, seeking special leave, full medical aid, compensation etc., to officers victimized on account of such incidents during the course of their duty.

While matters stood thus, the petitioner received a letter dated 6.4.1993, from the 3rd respondent, informing him that they had been advised by the 2nd respondent not to extend the facility of special leave beyond 31.3.1993, in view of the telex message dated 1.4.1993 received from the 1st respondent. In the letter dated 6.4.1993 the petitioner was asked to intimate his willingness to accept voluntary retirement on payment of compensation in terms of the bank's circular dated 29.12.1986. The 3rd respondent informed the petitioner that, in view of the instructions given by the 1st respondent, extension of special leave was not being sanctioned any longer and that the benefit of full medical reimbursement, extended to him till then, was also being discontinued. The petitioner applied for half pay leave, available to his credit, which, according to him, was more than 325 days. The respondents, however, declined to sanction leave stating that the same would not lie when special leave was granted. The petitioner submitted a representation on 11.8.1993 informing that he intended to rejoin service on the expiry of special leave and that, though he was blind, he could work in the administrative office with the help of a stenographer. The Commissioner, Handicapped Welfare, vide letter dated 06.10.1993, also recommended his retention in service, citing several instances of blind persons who were successfully rendering services. The respondents, however, did not permit the petitioner to rejoin duty. The petitioner submitted another representation on 20.12.1993 seeking an opportunity to show his performance with the help of a stenographer and thereafter retain him in service. In response thereto the 3rd respondent, vide letter dated 16.6.1994, asked him to rejoin duty on production of a medical fitness certificate issued by a doctor not below the rank of a Civil Surgeon. The petitioner submitted a medical fitness certificate, dated 17.6.1994, issued by Dr. G. Sreenath, wherein it was opined that his

general health condition was good except for visibility. The petitioner reported for duty on 25.6.1994 and is said to have attended office till 29.6.1994 and to have signed in the attendance register. On 29.6.1994 the 3rd respondent informed the petitioner that he would report the matter to the Head Office regarding the nature of duties to be allotted to the petitioner. On the same day the 3rd respondent, vide letter dated 29.6.1994, directed the petitioner not to attend office from 30.6.1994 until instructions were received from the head office. The petitioner did not receive any intimation thereafter from the respondents asking him to rejoin service. The 1st respondent, in exercise of the powers conferred under Regulation 19(1) and (2) of the UCO Bank (Officers') Service Regulations, 1979, issued proceedings dated 24.11.1995 retiring the petitioner from service with immediate effect. It was also ordered that the petitioner be paid three months substantive salary/pay and allowances last drawn.

Petitioner would submit that the respondents neither extended special leave nor granted him sick leave available to his credit, that he was compelled to take voluntary retirement, as stated in the letter dated 6.4.1993, without adequate compensation, that the amount he would receive on voluntary retirement was hardly sufficient to repay the loans which he had borrowed and that, even if he was paid half salary on sick leave, he could not meet all his expenses including his children's education and repayment of debts. Petitioner would submit that it was not open to the respondents to insist that he should seek voluntary retirement nor could they terminate his services for his refusal to do so and that such acts were illegal, unlawful and in violation of principles of natural justice and fair play.

Sri B. Nalin Kumar, learned counsel for the petitioner, would submit that an employee can be compulsorily retired from service only in public interest and that there was no public interest involved in compulsorily retiring the petitioner. Learned counsel would submit that the impugned order dated 24.11.1995, compulsorily retiring the petitioner from service, was an act of victimization and was passed only because he did not accept the offer of voluntary retirement made by the respondent-bank. Learned counsel would submit that the impugned order dated 24.11.1995 cannot be given retrospective effect from 1.4.1993 and that the second proviso to Regulation 19 required notice pay of three months to

be paid as on the date of the impugned order and not three months salary based on the pay and allowances as on 31.3.1993. Learned counsel would submit that failure to pay three months salary, in accordance with the pay and allowances applicable on 24.11.1995 when the impugned order was passed, would render the order of compulsory retirement from service illegal and ab initio void and the petitioner must be deemed to have continued in service till he attained the age of superannuation of 60 years on 31.7.2002. Learned counsel would submit that Section 47 of the Prevention of Disabilities Act mandates the employer to provide alternative employment to an employee suffering from the physical disability of loss of vision and, though the petitioner had offered to discharge alternative functions with the help of a stenographer, no attempt was made by the respondent-bank to ascertain as to whether or not the petitioner was in a position to render service to the Bank in an alternative capacity. Learned counsel would submit that, as the provisions of the Disabilities Act are beneficial in nature, they have retrospective operation and must be held to be applicable even to cases where the services of an employee were terminated prior to the date on which the Act came into force. Learned counsel would rely on **Baldev Raj Chadha Vs Union of India**[1], **Mahadevan Vs. Reserve Bank of India**[2] and **Syed Sha Musebulla Alvi Vs. Secretary, G.A.D., Secretariat, Hyderabad**[3]. Learned counsel would submit that, under the Regulations, an employee can be compulsorily retired from service only on completion of 30 years of service or on his crossing 55 years of age, that the petitioner completed 30 years of service in July 1994 and 55 years of age in July 1997 and therefore the Bank could not have compulsorily retired him from service with effect from 1.4.1993. Learned counsel would rely on **Smt K. Indira Vs. State Bank of India**[4] and **National Federation of the Blind Vs. Union Public Service Commission**[5] to submit that blindness by itself was not a ground to terminate the services of the petitioner. Learned counsel would invoke the doctrine of proportionality, placing reliance on the judgment of the Apex Court in **Teri Oat Estates (P) Ltd Vs. U.T. Chandigarh**[6], and submit that failure of the respondent-bank to examine as to whether the petitioner was capable of discharging his functions, if provided with alternative employment, was in violation of Articles 14 and 16 of the Constitution of India. Learned counsel

would submit that, since the action of the respondent-bank, in compulsorily retiring the petitioner from service on 24.11.1995, was arbitrary and illegal, the petitioner must be deemed to have continued in service till he attained the age of superannuation on 31.7.2002 and till such date he was entitled for pay and allowances, including the benefits of any revision in pay, increments etc.,

Sri V. Ajay Kumar, learned Standing Counsel for the respondent-Bank, would submit that, while there was nothing on record to establish a link between the acid attack on the petitioner and the disciplinary proceedings in which he was the enquiry officer, the Bank had, nonetheless, taking a sympathetic view, treated his period of absence from June 1986 till March, 1993 as special leave and had paid him salary and allowances as if he had continued to discharge his duties with the respondent bank. Learned Standing Counsel would submit that, in addition, the petitioner had been reimbursed 100% of the medical expenses incurred by him, that it was only with a view to help the petitioner that the bank had offered him voluntary retirement so that he would receive additional monetary benefits besides employment being provided to one of his dependants and that the sympathy shown by the Bank could not be construed as victimization. Learned counsel would further submit that the Bank, on examining the matter in detail, had come to the conclusion that the petitioner was not in a position to discharge even the normal functions required of a bank officer and, as the petitioner chose not to retire voluntarily, the bank had no other alternative but to take action against him under Regulation 19 and compulsorily retire him from service. Learned counsel would submit that, while the impugned order would come into operation only from 24.11.1995, the date on which it was passed, as the petitioner was informed, as early as on 1.4.1993, that the Bank no longer treated the period of his absence as special leave, and since he did not work after 1.4.1993, he was not entitled for payment of salary for the period between 1.4.1993 and 24.11.1995 on the principle of 'no work no pay'. Learned counsel would submit that the Prevention of Disabilities Act does not have retrospective application and that, while the Bank was sympathetic to the petitioner's plight, it could not continue to pay him salary and allowances forever, more so when he was not in a position to render any service to the bank. Learned counsel would submit that compulsorily retiring an employee, on his being found unfit to discharge normal duties, was in public interest as no

public purpose would be served in retaining such an employee in service when he was not in a position to discharge his normal duties as an officer of the Bank. Learned counsel would submit that the petitioner was informed that the Bank would not grant him special leave from 1.4.1993 and, as he did not attend work thereafter, the three months pay and allowances required to be paid was rightly computed based on the scales of pay as on 1.4.1993 and that the petitioner was not entitled for payment of three months salary based on the subsequent revision of pay scales. Learned counsel would submit that the petitioner was not capable of discharging any alternate duties and that it was not for the petitioner to indulge in a hypothetical exercise of self assessment. Learned counsel would submit that, in any event, these were matters which this Court would not examine in proceedings under Article 226 of the Constitution of India and, since the power exercised by the respondent-Bank, to compulsorily retire the petitioner from service, was reasonable and did not violate any of his constitutional or statutory rights, no interference was called for.

Before examining the rival contentions, it is necessary to refer to the relevant statutory provisions. In exercise of the powers conferred by Section 19, read with sub-section (2) of Section 12, of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the UCO Bank, in consultation with the Reserve Bank of India and with the previous sanction of the Central Government, made the UCO Bank (Officers') Service Regulations, 1979 which came into force on 1.7.1979. The said regulations apply to all officers of the Bank. Regulation 3(c) defines the Board to mean the Board of Directors of the Bank, Regulation 3(d) defines 'competent authority' to mean the authority designated for the purpose by the Board, Regulation 3(k) defines pay to mean basic pay including stagnation increment and Regulation 3(l) defines 'salary' to mean the aggregate of pay and dearness allowance. Regulation 19 which deals with the age of retirement reads thus:-

"(1) The age of retirement of an officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time –

"Provided that the Bank may, at its discretion, on review by the Special Committee/Special Committees as provided hereinafter in sub-regulation(2) retire, if it is of the opinion that it is in the public interest, an officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an officer employee or otherwise, whichever is earlier"

Provided further that before retiring an officer employee, at least three month's notice in writing or an amount equivalent to three months' substantive salary/pay and allowances, shall be given to such officer employee;

Provided further that an officer aggrieved by the order of the Competent Authority, as

provided in sub-regulation(2) may, within one month of the passing of thee order, give in writing a representation to the Board of Directors against the decision of the Competent authority, and on receipt of such representtion fromm the concerned officer, the Board of Directors shall consider his representation and take a decision within a period of three months. Where the Board of Directors decides that the order passed by the Competent Authority is not justified, the concerned officer shall be reinstated as though the Competent Authority has not passed the order;

Provided also that nothing in this regulation shall be deemed to preclude an officer employee from retiring earlier pursuant to the option exercised by him in accordance with rules in the Bank.

Explanation

An officer employee will retire on the last day of the month in which he completes his age of retirement.

(2) The Bank shall constitute a Special Committee(s) consisting of not less than three members to review whether an officer employee should be retired in accordance with the first proviso to this regulation. Such Committee(s) shall, ,from time to time, review the case of each officer employee and no order of retirement shall be made unless the Special Committee(s) recommend(s) in writing to the Competent Authority the retirement of the Officer employee.

(The guidelines issued by the Government in terms of proviso to Regulation 19(1) & (2) are given in Annexure-7)."

Under the proviso to Regulation 19(1) of the UCO Bank (Officers') Service Regulations, 1979, an officer-employee may be compulsorily retired from service after completion of 55 years of age or at any time after completion of 30 years of total service whichever is earlier. In order to compulsorily retire an officer-employee from service his case must first be reviewed by a Special Committee. Thereafter the Bank in its discretion, and if it is of the opinion that it is in public interest, may compulsorily retire him from service. Under the second proviso to Regulation 19(1), before retiring an officer employee, at least three months notice in writing or an amount equivalent to three months substantive salary/pay and allowances is required to be paid to him. Regulation 19(2) provides for the constitution of a special committee, consisting of not less than three members, to review whether an officer employee should be retired from service in accordance with the first proviso to Regulation 19(1). Regulation 19(2) further provides that no order of retirement shall be made unless the special committee recommends in writing, to the competent authority, that the officer employee be retired from service.

In order to compulsorily retire an officer employee from service the statutory regulations of the respondent bank require compliance with the following conditions:

(1) The officer employee must have completed either 55 years of age or 30 years of total service whichever is earlier;

(2) A special committee, consisting of not less than three members, should be constituted by the Bank to review whether or not the officer employee should be compulsorily retired from service;

(3) The special committee must recommend in writing, to the competent authority, that the officer employee be compulsorily retired from service;

(4) The competent authority may thereafter in its discretion, and if it is of the opinion that it is in public interest, compulsorily retire the officer employee from service.

(5) Before retiring an officer employee, at least three months notice in writing should be given or an amount equivalent to three months substantive salary/pay and allowances should be paid.

Compulsory retirement, in service jurisprudence, is of two kinds. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent employee consequent upon a finding of guilt being recorded in a disciplinary enquiry. Such a penalty involves stigma and can be inflicted only after following the procedure prescribed by the relevant rules or consistent with the principles of natural justice if the field, for inflicting such penalty, be not occupied by rules. There are service rules which confer on the government, or the appropriate authority, an absolute (but not arbitrary) right to retire an employee, on his attaining a particular age or on his having completed a certain number of years of service, on formation of the opinion that in public interest it is necessary to compulsorily retire him from service. In such cases it is neither a punishment nor a penalty and does not entail loss of retiral benefits. (**Shyamlal v. State of U.P.**[7], **Brij Mohan Singh Chopra v. State of Punjab**[8], **S. Ramachandra Raju v. State of Orissa**[9]; **Baikuntha Nath Das v. Chief District Medical Officer, Baripada**[10]) More appropriately, it is like premature retirement. It does not cast any stigma. As long as the opinion, which constitutes the basis of the order of compulsory retirement, is formed bonafide, and in public interest, the opinion cannot, ordinarily, be interfered with. Such an order may be subjected to judicial review on very limited grounds such as the order being malafide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is not to punish or penalise the employee but to weed out

the worthless, the dead wood, the paperlogged and the callous, who have lost their utility for the administration by their insensitive, unintelligent or dubious conduct impeding the flow of administration or promoting stagnation. (**Bishwanath Prasad Singh Vs. State of Bihar**[11]). That dead wood need to be removed, to maintain efficiency in public service, cannot be disputed. Integrity of the employee is the foremost consideration in public service. If the conduct of an employee is against public interest, or obstructs efficiency in public service, the employer has the right to compulsorily retire such an employee in public interest. The employer's right to compulsorily retire an employee is a method of ensuring efficiency in public service. The entire service record, character roll or confidential report furnishes the material to the employer to find out whether an employee has outlived his utility in service. It is on consideration of the totality of the material, with emphasis on the later entries in the character roll, is the employer expected to form its opinion whether an employee is to be compulsorily retired from service or not. (**State of U.P. Vs. Vijay Kumar Jain**[12]). The passing of an order of compulsory retirement is based on the subjective satisfaction of the competent authority, however, on objective considerations. Unless it is shown that the order of compulsory retirement was passed arbitrarily, and without application of mind, or that such formation of opinion to compulsorily retire the employee was based on no evidence or that the order is perverse, Courts would not, normally, interfere. (**Jugal Chandra Saikia Vs. State of Assam**[13]). While the right conferred on the appropriate authority to compulsorily retire an employee is absolute, that power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. Because of his compulsory retirement an employee does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the employer may feel that a particular post may be more usefully held in public interest by an officer more competent than the

one who is holding it. While the officer, who is holding the post, may not be inefficient, the appropriate authority may prefer to have a more efficient officer. It may further be that, in certain key posts, public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations, and more so in government organizations, there is a good deal of dead-wood. It is in public interest to chop off the same. The Rule holds the balance between the rights of the individual employee and the interests of the public. While a minimum service is guaranteed to the employee, the employer is given the power to energise its machinery and make it more efficient by compulsorily retiring those who, in its opinion, should not be there in public interest. It is true that an order of compulsory retirement is bound to have some adverse effect on the employee concerned but then, as the rule provides, such retirement can be made only after the officer attains the prescribed age or the prescribed length of service. Further, a compulsorily retired employee does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment. (**Union of India Vs. Col. J.N. Sinha**[14]). Principles of natural justice are not attracted in a case of compulsory retirement or a rule corresponding to it. There is no reason to presume that the authority competent to retire him will not act bonafide or will not consider the entire record dispassionately. Very often a Review Committee, consisting of more than one responsible official, is constituted to examine the cases and make their recommendation to the competent authority. The nature of the function, in taking the decision to compulsorily retire an employee from service, is not quasi-judicial in nature and action has to be taken on the subjective satisfaction of the employer. There is no room for importing the audi-alteram partem facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma. (**Baikuntha Nath Das**[10]).

In **Baldev Raj Chadha**[1], the Supreme Court observed:

"…. This takes us to the meat of the matter viz. whether the appellant was retired because and only because it was necessary *in the public interest* so to do. It is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is a terminal step to justify which the onus is on the Administration, not a matter where the

victim must make out the contrary. Security of tenure is the condition of efficiency of service. The Administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and the sombre problems of one's own life's evening, your experience, accomplishments and fullness of fitness become an asset to the Administration, if and only if you are not harried or worried by "what will happen to me and my family?" "Where will I go if cashiered?" How will I survive when I am too old to be newly employed and too young to be superannuated?' These considerations become all the more important in departments where functional independence, fearless scrutiny, and freedom to expose evil or error in high places is the task. And the Ombudsmanic tasks of the office of audit vested in the C & AG and the entire army of monitors and minions under him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique overawing is very much in public interest. So it is that we must emphatically state that under the guise of "public interest" if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected. The exercise of power must be bona fide and promote public interest. There is no demonstrable ground to infer mala fides here and the only infirmity alleged which deserves serious notice is as to whether the order has been made in public interest. **When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of "public interest" justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.**

We will consider this question to the extent disclosed by the record and in the light of the submissions made by both the parties. **The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. After all, Administration, to be efficient, must not be manned by drones, do nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation, in a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed but paperlogged processes and callous cadres are the besetting sin of the Administration. It is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making. The appropriate authority, not the court, makes the decision, but, even so, a caveat is necessary to avoid misuse.**

> "…..One wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for *five years immediately before the compulsory retirement*, could be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. A short cut may often be a wrong cut. **The order of compulsory retirement fails because vital material, relevant to the decision, has been ignored and obsolete material, less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be**

sustained. Legality depends on regard of the totality of material facts viewed in a holistic perspective. For these reasons, the order challenged is obviously bad and we quash it. It is, however, open to the AG to take a fresh decision based on legal material and guided by legal principles. The appellant has, by now, reached the age of superannuation in the normal course. The result is that the consequence of any fresh order may only be financial. It is for the AG to consider whether in the circumstances, a fresh evaluation for the purpose of compulsory retirement is called for. We merely allow the appeals quash the order of compulsory retirement and leave the law to take its course....." (emphasis supplied)

In **Baikuntha Nath Das**[10], the Supreme Court laid down certain principles regarding compulsory retirement. To quote:-

".....The following principles emerge from the above discussion:

(*i*) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(*ii*) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(*iii*) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. **While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (*a*) mala fide or (*b*) that it is based on no evidence or (*c*) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.**

(*iv*) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(*v*) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (*iii*) above. ....." (emphasis supplied)

Again in **State of Gujarat Vs. Umedbhai M. Patel**[15], the Apex Court held:-

"..... The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(*i*) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(*ii*) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(*iii*) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the

entire service record of the officer.

(*iv*) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(*v*) Even uncommunicated entries in the confidential record can also be taken into consideration.

(*vi*) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(*vii*) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(*viii*) Compulsory retirement shall not be imposed as a punitive measure……..” (emphasis supplied)

Sri B. Nalin Kumar, learned Counsel for the petitioner, would refer to **Madhavan[2]**, wherein the Kerala High Court observed:

“….Proviso to Regulation 26(1) does not mention public interest as a touch stone in exercise of the powers conferred therein. Unbridled power dehors public interest is provided by the said regulation. The necessity for indicating the public interest as the real guiding factor for compulsory retirement is regarded bylaw as quite essential in al rules dealing with compulsory retirement. An action could thus be taken for compulsory retirement of an officer only if it is in the opinion of the appropriate authority that it is so to do in public interest. The absence of any reference to public interest in provisos 3 and 4 to Regulation 26(1) lays it open to the attack that it is void of any guidance to the authorities who is empowered to exercise power conferred thereunder…… Therefore, so much of the provisos to Regulation 26(1) which empowers authorities to retire an employee otherwise than in public interest is unconstitutional and illegal as being violative of Article 14 of the Constitution. So I declare it as such…..”

Unlike regulation 26 of the Reserve Bank of India Regulations, which came up for consideration in **Madhavan[2]** before the Kerala High Court and which empowered the authorities to compulsorily retire an employee otherwise than in public interest, Regulation 19(1) of the UCO Bank (Officers) Service Regulations, 1979, enables the competent authority to compulsorily retire an officer-employee only in public interest. The judgment in **Madhavan[2]** is, therefore, of no assistance to the petitioner.

The 1st respondent, by order dated 17.11.1994, constituted a Special Committee, of three General Managers, to review whether or not the petitioner should be compulsorily retired from service. The Special Committee sought the opinion of a Medical Board consisting of three civil surgeons of the Sarojini Devi Eye Hospital. The report of the Medical Board was forwarded, by the Superintendent of the Sarojini Devi Eye Hospital, vide memo dated 20.9.1994. The Medical Board opined that since there was no vision (no perception of light) in both the petitioner’s eyes, he could not discharge his routine duties. After

considering the Medical Board's report the Special Committee, in its report dated 12.5.1995, unanimously recommended that the petitioner be retired from bank service. After taking into consideration the fact that the petitioner had not responded positively to the offer made by the Bank, vide its resolution dated 2.3.1993, to voluntarily retire from service on medical grounds in which case one of his dependants would have been given employment as per Bank's rules, and after carefully going through the facts of the case, the 1st respondent-competent authority agreed with the recommendations of the special committee that the petitioner be retired from the service of the bank consequent upon total loss of his eye-sight. The first respondent, in exercise of the powers conferred under Regulation 19(1) and (2) of the UCO Bank (Officers) Service Regulations, 1979, ordered that the petitioner be retired from bank service with immediate effect and that he be paid an amount equivalent to three months substantive salary/pay and allowance last drawn along with the order.

It is no doubt true that the impugned order dated 24.11.1995 does not specifically state that the petitioner had been retired from service in "public interest". Even if it is not stated, on the face of the order, that action was initiated in "public interest", and even if the particulars in that behalf are not pleaded, it is open to the employer to place material before the Court in support of its contention that the action was taken in "public interest". That is not to say that care need not be taken while drafting the order of compulsory retirement, or in drawing up the defence, when the action to compulsorily retire an employee is under challenge. But on that account alone the order will not be quashed if it can otherwise be shown that the action was taken in "public interest". (**Registrar, High Court of M.P. Vs. Rajabai Gorkar**[16]).

Formation of opinion, that an officer employee of the bank should be compulsorily retired from service in public interest, is based on the subjective satisfaction of the competent authority, however, on objective considerations. In the case on hand, it is not in dispute that the petitioner had lost complete vision in both his eyes. The finding of the Medical Board that, as a result, he is not in a position to discharge his routine duties, is not disputed. Ever since 18.06.1986, when acid was thrown on the petitioner, till 31.3.1993, the petitioner was granted special leave, and was given the benefit of full pay and allowances, as applicable to an officer-employee of similar rank in the service of the bank,

despite his inability to render any service to the bank. It is not in dispute that his entire medical expenditure from 1986 till 1993, including the cost of the surgeries undergone by him, was fully borne by the bank. After waiting for more than nine years, and in as much as there was no possibility of the petitioner discharging even the routine duties of an officer of the bank, the 1st respondent took the decision to compulsorily retire him from service. It is not for this Court to substitute its views for the opinion of the 1st respondent based on its subjective satisfaction, that the bank was no longer in a position to continue to bear the burden of payment of salary to the petitioner herein, without his being able to discharge his routine duties. The objective considerations, on which such subjective satisfaction was arrived at by the 1st respondent, is the medical report that the petitioner had lost vision in both his eyes and was in no position to discharge his routine duties. It cannot be said that compulsorily retiring an employee, who has completely lost vision in both his eyes and is not in a position to discharge his routine duties, is not in "public interest". Since this Court, in proceedings under Article 226 of the Constitution of India, would not sit in appeal over the satisfaction arrived at by the competent authority, to compulsorily retire an officer employee from bank's service, except in case where the order of compulsorily retirement is passed as a punitive measure or is based on no evidence or is malafide or arbitrary, no interference is called for.

The contention, that the order of compulsory retirement is an act of victimization and has been passed only because the petitioner did not take up the bank's offer of voluntary retirement, does not merit acceptance. While it is true that the petitioner was repeatedly requested by the respondent-bank to take up its offer, to voluntarily retire from service, in which event one of his dependants would be provided appointment in accordance with the rules and he would be entitled for the benefits under the voluntary retirement scheme, the offer made to the petitioner was on sympathetic grounds and as he had suffered a heinous attack which resulted in his facial disfigurement and loss of vision in both his eyes. The fact that the petitioner had lost vision in both eyes, and was not in a position to discharge his routine duties, is not in dispute. The conclusion arrived at by the 1st respondent, that the petitioner was no longer in a position to render any service to the Bank, is based on objective considerations and is not an act of victimization. Since the petitioner refused the bank's offer of

voluntary retirement, the 1st respondent was left with little option but to invoke its powers under Regulation 19(1) and (2) of the UCO Bank (Officers) Service Regulations, 1979 and compulsorily retire him from service. Having been the recipient of the bank's benevolence, in being paid full salary and allowances ever since June, 1986 till March, 1993, and having been reimbursed the entire medical expenditure incurred by him, the plea of victimization now urged before this Court is only to be noted to be rejected. While the petitioner would contend that the acid attack on him was a direct result of his being asked to enquire into the charges levelled against Sri S.S. Murthy, the respondents would contend, not without justification, that there is no evidence to link the acid attack on the petitioner with the departmental enquiry held against Sri S.S. Murthy wherein the petitioner was appointed as the enquiry officer. The plea of victimization must, therefore, fail.

The next question which arises is as to whether Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995,(Act 1 of 1996), enured to the petitioner's benefit and required the respondent bank to have continued the petitioner in service till he reached the age of superannuation. Section 47 reads thus:

"Non-discrimination in Government employment: (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section"

It is no doubt true that, in view of Section 47, the services an employee, who acquired a disability during his service, cannot be dispensed with. It cannot, however, be lost sight of that Section 1(3) provides that Act No.1 of 1996 shall come into force on such date as the Central Government may, by notification, appoint. The Central Government, in its notification No.S.O.107(E) dated 7.2.1996, brought Act 1 of 1996 into force from 7.2.1996. In the present case, the impugned order of compulsory retirement was passed on 24.11.1995 much prior to 7.2.1996 when Act 1 of 1996 came into force.

Sri B. Nalin Kumar, learned counsel for the petitioner, would however contend that, since Section 47 of the Act is a beneficial provision, it must necessarily be given retrospective application. Learned counsel would place reliance on the observations of the Supreme Court in **National Federation of Blind**[5].

"….The question of giving preference to the handicapped in the matter of recruitment to the identified posts is a matter for the Government of India to decide. The matter is pending for decision with the Government of India for the last several years. While appreciating various measures undertaken by the Government to provide useful employment to the handicapped persons we commend the Government of India to decide the question of providing preference/reservation to the handicapped in Group 'A' and 'B' posts as expeditiously as possible.

So far as the claim of visually handicapped for writing the civil services examinations, in Braille-script or with the help of Scribe, is concerned, we are of the view that their demand is legally justified.

The list of Category 'A' and 'B' posts, identified as suitable for the visually handicapped by the committee, includes number of posts which are filled as a result of the civil services examinations. When there are posts to which blind and partially blind can be appointed, we see no ground to deprive them of their right to compete for those posts along with other candidates belonging to general category.

…….After going through the list of the posts identified as suitable for visually handicapped (blind and partially blind) it is obvious that there are number of posts which are required to be filled through the civil services examination and other competitive examinations conducted by the Commission. Group 'A' and 'B' posts in the category of Administrative Officers (Secretarial-Senior) and Administrative Officer (Secretarial-Junior) are necessarily to be filled as a result of civil services examination by the Union Public Service Commission. If some of the posts in the Indian Administrative Service and other Allied Services, as identified by the committee, can be filled from amongst the visually handicapped persons then we see no reason why they should not be permitted to sit and write the civil services examination. We make it clear that once recruited to the lowest level of the service the visually handicapped persons shall not be entitled to claim promotion to the higher posts in the service irrespective of the physical requirements of the jobs. If in the hierarchy of promotional posts it is found by the Government that a particular post is not suitable for the visually handicapped person he shall not have any right to claim the said post.

In the light of the above discussion we partly allow the writ petition and direct the Government of India and the Union Public Service Commission to permit the visually handicapped (blind and partially blind) eligible candidates to compete and write the civil services examination which is ordinarily held yearly by the Union Public Service Commission. We further direct that they shall be permitted to write the examination in Braille-script or with the help of a Scribe….."

Learned Counsel would also place reliance on **Sri Suhas Vasant Karnik Vs. Bank of India**[17] wherein the Bombay High Court observed:

"……The learned counsel for the petitioner invited the attention of the court of the ratio of the judgment of the Honourable Supreme Court in the case of NATIONAL FEDERATION OF BLIN v. UNION PUBLIC SERVICE COMMISSION & ORS. Reported in (1993)2 Supreme Court Cases 411. It is obvious from the said judgment that the Honourable Supreme Court has already taken a view to the effect that the Government of India and the Union Public Service Commission are bound to permit the Visualy handicapped person (blind and partially blind) eligible candidates to compete in civil services examination which are ordinarily held

yearly by the Public Service Commission. The Hon'ble Supreme Court has directed the respondents to permit such persons to write the answer paper in Braille Script or with the help of a scribe. While partly allowing the Writ Petition, the Hon'ble Supreme Court expressed the view that the visually handicapped constitute a significant section of our society and as such it was necessary to encourage their participation in every walk of life". The Hon'ble Supreme Court did consider identifying the jobs for the handicapped in Group "A" and "B" posts under the Government and Public Sector undertakings. …….

……..The only restrictions which can be spelt out from the ratio of the Supreme Court judgment is as to whether the post in respect whereof the petitioner seeks consideration is totally unsuitable for visually handicapped person having regard to the nature of duties attached to the office/post. In my opinion, the ratio of the judgment of the Hon'ble Supreme Court in the case of NATIONAL FEDERATION OF BLIND v UNION PUBLIC SERVICE COMMISSION & ORS. Reported in (1993)2 S.C. cases 411 concludes the controversy in favour of the persons who happen to be physically handicapped. I am not prepared to extend the scope and ambit of restriction to the right of the physically handicapped to be considered for promotion.

After taking an overall view of the matter, I pass the following order:

(a) It is hereby declared that the petitioner and other similarly situate are not debarred from being considered for appointment or promotion to any post in the bank except the post which cannot be considered as a suitable post having regard to the fact that the petitioner and other similarly situate are visually handicapped and the nature of the duties attached to the office are such that a person visually handicapped shall not be able to perform such duties such post is therefore, liable to be considered as totally "unsustainable for the physically handicapped or visually handicapped.

(b) The respondent No.1 is directed to consider the petitioner and all other similarly situate for promotion, for appointment and /or promotion in respect of all "suitable post" in future as and when the occasion arises having regard to the ratio of the judgment of the Hon'ble Supreme Court in the case of National Federation of Blind v. Union Public Service Commission & Ors. and allow the petitioner and all others similarly situate to appear in the promotional examination and participate in the process of promotion. IF any written test or examination is prescribed by the Respondent for the members of the staff seeking consideration for promotion, the petitioner and other similarly situate shall be also allowed to appear in examination. In other words, the petitioner and others who are visually handicapped shall be treated on par with the other members of the staff for their consideration for promotion except in respect only of such posts which are liable to be considered as totally unsuitable for the physically handicapped by reasons of their inability to perform the duties attached to the post. If the petitioner succeeds in the prescribed written test for promotional examination which may be held hereafter, the respondent would consider the petitioner for promotion in respect of a suitable post at the first available opportunity. The respondent is directed to consider the case of physically handicapped for promotion to a suitable post sympathetically.

The respondent No.2 is directed to appoint a Committee to identify the posts which may be made available to the persons who are visually handicapped in the nationalized banks for the State Bank or Reserve Bank of India so as to ensure uniformity of approach and implementation of policy by all the banks. The respondent no.2 is hereby directed to appoint a High Power Committee in this behalf within a period of three months from today. When the committee is appointed shall make its report to the Government of India within 6 months from today. The Government of India shall thereafter take appropriate decision within three months of the receipt of the report. The Respondent no.2 is directed to file a copy of report of the Committee and its decision in this Court within one year from today so as to assist this Court in deciding such cases in future. The respondent no.2 is directed to furnish a copy of the report and its final decision to all the other parties to the petition expeditiously. The petitioner and respondent no.1, 3 to 5 shall be granted an opportunity to make their respective representation to the committee to be appointed by respondent no.2 for further identification of suitable post in the Banks which can be made available to physically handicapped including the visually handicapped persons. This direction is without prejudice to the obligation of the respondent to act in terms of Chief of the court set out in clauses (a) &

(b) hereof……"

In **National Federation of the Blind**[5], the Apex Court held that the question of giving preference to the handicapped, in matters of recruitment to identified posts was a matter for the government to decide and commended the government to decide the question of providing preference/reservation to the handicapped, in Group 'A' and 'B' posts, as expeditiously as possible. The Supreme Court held that, when there were posts to which the blind and the partially blind could be appointed, there was no ground to deprive them of their right to compete for those posts along with other candidates in the general category. The Apex Court made it clear that, once they were recruited to the lowest level of service, the visually handicapped were not entitled to claim promotion to higher posts irrespective of the physical requirements of the job. The Supreme Court directed the Central government and the Union Public Service Commission to permit the visually handicapped, (blind and partially blind), to compete and write the civil services examination in Braille-script or with the help of a scribe.

While retention of the petitioner in service, despite his blindness, would certainly have been a commendable gesture on the part of the 1st respondent, the question is whether, in the absence of a statutory obligation requiring them to do so, this Court, under Article 226 of the Constitution of India, can issue a mandamus directing the respondents to continue the petitioner in service or accommodate him in an alternate post.

In **Syed Sha Musebulla Alvi**[3], this Court observed:-

"…..The petitioner joined the service of the respondent-Corporation as Conductor on 19.1.1985. While serving as such, he became disabled, in the sense, he lost vision of both the eyes and became disabled to perform the duties and functions attached to the post of Conductor. Therefore, the petitioner sought alternative employment in the establishment of the Corporation. Since there was no positive response from the management, the petitioner on earlier occasion, filed W.P.No.24095 of 1996 and the said writ petition was disposed of on 11.9.1997 holding that the petitioner is entitled to pursue review remedy provided under the Regulations, and there afterwards, the reviewing authority under the Regulations viz., Vice-Chairman and Managing Director, considered the claim of the petitioner and rejected his claim by the impugned proceedings dated 18.4.1998. Hence this writ petition assailing the validity of the proceedings of the Vice-Chairman and Managing Director dated 18.4.1998. The contention of the petitioner is that this case was not considered by the Vice-Chairman and Managing Director of the Corporation in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'). The above Act is a Central enactment, and it was brought into force w.e.f. 7.2.1996. The Act apparently applied to the establishment of the respondent-Corporation also. Claus (k) of Section 2 of the Act defines 'Establishment' to mean, among other entities, a Corporation established by or under a Central or Provincial or State Act. Therefore, the

respondent-Corporation is an establishment within the meaning of the term 'Establishment' defined under Section 2(K) of the Act. If the Act is applicable to the Corporation, Section 47 should be applied to the instant case also....."

..... The Court perused the impugned order of the Vice-Chairman and Managing Director. The Vice-Chairman and Managing Director has not at all adverted to the provisions of Section 47 of the Act.

On the above short ground, I allow the writ petition and quash the impugned proceedings dated 18.4.1998. The proceedings shall stand remitted to the Vice-Chairman and Managing Director with a direction to consider the claim of the petitioner de novo, in the light of the provisions of Section 47 of the Act, and communicate his decision to the petitioner, within a period of two months from the date of receipt of a copy of this order....."

In **Syed Sha Musebulla Alvi**[3], this Court had directed the Vice-Chairman and Managing Director of the A.P.S.R.T.C. to consider the claim of the petitioner, (who had lost his vision and had become disabled to perform the duties and functions attached to the post of a conductor), in the light of the provisions of Section 47 of Act 1 of 1996. It is not clear as to whether termination of the services of the petitioner therein was after Act 1 of 1996 came into force or prior thereto. From the judgment it is apparent that the question, as to whether Act 1 of 1996 has retrospective operation, did not arise for consideration. The aforesaid judgment is, therefore, of no assistance to the petitioner.

It is well settled that no statute shall be construed to have retrospective operation unless such a construction appears very clearly in terms of the Act or arises by necessary and distinct implication. (**Mahabir Vegetable Oils (P) Ltd Vs. State of Harayna**[18]). As noted above, under Section 1(3) of Act 1 of 1996, the said Act came into force from 07.02.1996. Act 1 of 1996 neither expressly nor by necessary implication provides for its retrospective application prior to 07.02.1996 when the Central Government, by notification, brought Act 1 of 1996 into force. Since the impugned order of compulsory retirement was passed on 24.11.1995, its validity cannot be examined on the touchstone of Section 47 of Act 1 of 1996, which statutory provision was not in existence when the said order was passed.

Sri B. Nalin Kumar, learned counsel for the petitioner, would contend that blindness, by itself, is not a ground to terminate the services of an officer-employee. Learned counsel would rely on **Smt. K. Indira**[4] wherein this Court observed:-

"…… Once the petitioner is found to be fully qualified and stood in merit comparatively with the other candidates who are not selected, she cannot be classified as a different person belonging to a group not possessing the required medical fitness. The authority disqualifying her on a greater standard of medical fitness cannot escape the mischief of Art.16 by showing that she does not possess 100 per cent medical fitness. The standard of medical fitness may vary from job to job and sometimes may be prescribed for the employer and in which case those requirements must be satisfied. Sri Srinivasamurthy placed before me the standard of medical fitness for new recruits and promotees in the State Bank of India issued under different heads the guidelines requiring the medical fitness to be established by new recruits. The rules provide for systematic examination and broadly point out different aspect of fitness required for the employee in respect of Central and Peripheral Nervous System, Metabolic and Endocrinal system and the conditions of skin and ENT system and also ophthalmic system and Orthopedic system with special reference to the male candidates. The guidelines very rightly state that the report of the medical Board is final and will not be subject to the review by another specialist. No doubt it reserves itself absolute discretion to reject or accept any candidate after consideration of the report of the medical Board. The certificate of the Medical Board was already extracted in full. It states in emphatic terms that "the candidate though suffering from post operative Hypothyroidism that does not make the patient unfit for any post" and this opinion cannot successfully be challenged. Further the said disease is not one enumerated to disqualify the candidate as not satisfying the required standard of medical fitness. In fact those guidelines also provide for employment for disabled persons and hence the rejection of employment in the so called discretion of the employer in the State Bank of India which is a State within the meaning of Article 12 of the Constitution of India is not permissible under law. I hold that the candidate who was selected on merit cannot be denied the employment unless he was medically unfit. The reservation of the bank to select or not to select and to accept or reject the opinion of the Medical Board cannot be an absolute one and it must be reasonable, germane and should not constitute arbitrary exercise of the power of employment, and the rule to the contrary should yield to the doctrine embodied in Article 16.

The medical fitness may vary from person to person. It is not possible to expect every citizen to be 100 per cent medically fit. Some times persons inherit some defects from birth and sometimes they acquire subsequently. The employer-State should see that considering the nature of work and considering the degree of fitness, the employment is given to all citizens and the insistence of 100 per cent medical fitness irrespective of the nature of the job is wholly arbitrary and constitutes abuse of power.

An employee required to apply a special skill may be required to prove higher standards of medical fitness. If State refuses the employment if any person suffers from eye sight using glasses, a large number of citizen have to be disqualified but if a special talent is necessary and a particular eye sight is required for a special employment the State may be justified in insisting higher standards of eye sight. Similarly if the employment requires a policy making and a special drive, there may be justification for insisting the higher standards of medical fitness. The Insisting of 100 per cent medical fitness without referring to the nature of job constitutes clearly abuse and arbitrary exercise of the power of employment inhered in the State. After all it is the duty of the State to provide employment even to the disabled and unless the nature of the job entrusted to a particular person disqualifies him to hold the said post, the State cannot justify such denial. A complete denial of employment to persons having some health problems make them a dead weight on the society and the State should be loath to adopt such course.

……..Hence, I hold that in view of the clear opinion of the Medical Board and in view of the fact that the petitioner is recruited for the job of clerk-cum-typist she is entitled to the employment sought for as she proved her merit in the written and oral test. I accordingly allow the writ petition and quash the impugned order dated 29.4.1979 and direct the respondent-bank to select the petitioner to the post of Clerk-cum-typist as per the terms and conditions of service in relation to the employees of respondent bank….."

The judgment in **Smt. K. Indira**[4], is also of no assistance to the petitioner

herein. In the said judgment, the Medical Board found that, though the petitioner was suffering from post operative Hypothyroidisim, it did not make her unfit for any post. This Court held that Hypothyroidism was not amongst the enumerated diseases disqualifying a candidate from appointment on the ground of not satisfying the required medical fitness. It is in this context that this Court observed that if the State refused employment to persons who suffered from eyesight using glasses, a large number of citizens may have to be disqualified. This Court observed that if special talent was necessary, and a particular eyesight was required for special employment, the State may be justified in insisting on higher standards of eyesight, but insisting on hundred percent medical fitness, without reference to the nature of the job, constituted a clear abuse of and an arbitrary exercise of power.

Sri B. Nalin Kumar, learned counsel for the petitioner, would submit that even assuming that Act 1 of 1996 did not have retrospective application, and there was no statutory obligation on the respondents to provide the petitioner with an alternate job, their action in terminating his services must, nonetheless, be examined on the doctrine of proportionality since any action taken, in accordance with Articles 14 and 16 of the Constitution of India, must satisfy the test of reasonableness. Learned counsel would submit that, without examining the feasibility of continuing the petitioner in service, albeit in an alternate job, terminating his services was unreasonable and disproportionate. Learned counsel would rely on **Teri Oat Estates (P) Ltd.**[6], wherein the Supreme Court observed:-

> "……The situation, thus, in our opinion, warrants application of the doctrine of proportionality.
>
> The said doctrine originated as far back as in the 19th century in Russia and was later adopted by Germany, France and other European countries as has been noticed by this Court in *Om Kumar* v. *Union of India* (2001)2 SCC 386
>
> By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority
>
> "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve".
>
> ……. In *Om Kumar*, however, this Court evolved the principle of primary and secondary review. The doctrine of primary review was held to be applicable in relation to the statutes or statutory rules or any order which has the force of statute. The secondary review was held to be applicable inter alia in relation to the action in a case where the executive is guilty of

acting patently arbitrarily. This Court in *E.P. Royappa* v. *State of T.N.*(1974)4 SCC 3 noticed and observed that in such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions as for example, punishment in a departmental proceeding, the doctrine of proportionality was equated with Wednesbury unreasonableness.

We may, however, notice that the said doctrine in principle or the spirit thereof has recently been applied by the Court of Appeal.

In *Edore* v. *Secy. of State for the Home Deptt.*(2003)3 ALL ER 1265) the appellant was a citizen of Nigeria who had entered the United Kingdom and remained back after her visa had expired. She had two children, born to a British citizen. The children were emotionally dependent on him and he was a stabling influence on their lives. If the appellant and her children were returned to Nigeria, their relationship with their father would end. The Court trying to resolve the conflict at hand opined: (All ER pp. 1274 & 1276, paras 20 & 27)

"Where the essential facts were not in doubt or dispute, the adjudicator's task was to determine whether the decision under appeal was properly one within the decision-maker's discretion, namely, that it was a decision which could reasonably be regarded as striking a fair balance between the competing interests in play. If it were, then the adjudicator could not characterize it as a decision "not in accordance with the law" and so, even if he personally would have preferred the balance to have been struck differently, he could not substitute his preference for the decision in fact taken. However, there would be occasions where it could properly be said that the decision reached was outside the range of permissible responses open to him, in that the balance struck was simply wrong....."

The doctrine of proportionality requires that the most appropriate or the least restricted choice of measures be taken by the administrator to achieve the purpose of the administrative order. The administrative authority must maintain a proper balance between the adverse effects which the administrative order may have on the rights, liabilities or interests of the persons affected keeping in mind the purpose which the order intends to serve. The question which must, therefore, be examined is whether the restrictions imposed, in denying employment to the petitioner and in compulsorily retiring him from service, instead of accommodating him in an alternate post, is reasonable and satisfies the requirements of Articles 14 and 16 of the Constitution of India. In the present case the fact that the petitioner has lost vision in both his eyes, and is not in a position to discharge his routine duties, is not in dispute. In fact the petitioner himself had, vide letter dated 20.12.1993, informed the 1st respondent that he was confident that he could perform his duties by dictating letters/notes to the stenographer covering the areas mentioned in his earlier letter dated 11.8.1993. In his earlier letter dated 11.8.1993 the petitioner, while requesting the Bank to take a lenient view and to sanction sick leave on half pay basis, submitted that, in case sanction of sick leave was not considered, he intended to report for duty and though he was blind he possessed good experience of about six years of operational experience in the officer cadre and that he was

confident that, with the assistance of a stenographer, he could handle matters/correspondence relating to recovery, follow up action, lodgement and settlement of DICGC, claims of small loans, SSI loans, appraisal of small and medium credit proposals, claims relating to deceased depositors accounts etc. In their counter affidavit, filed before this Court, the respondents would submit that the nature of duties and the method of functioning of the bank did not permit it to adjust the petitioner in any other placement and, while thorough efforts were made to adjust him at one place or the other, their entire efforts were in vain. According to the respondents, since the petitioner was totally blind, the bank could not expect any production or productivity from him and it was unworkable to take work from him with the assistance of a stenographer since the bank dealt with public funds and carried on business in banking including finance and other matters. It is further stated that the petitioner could not be accommodated as a public relations officer, or in any other suitable post in the staff training college, as there was no post of pubic relations officer in the bank, that the said activity was undertaken by the planning and development department and that the job involved extensive touring in the areas of operation of the bank. Respondents would further submit that there is no staff training center of the bank in Andhra Pradesh and, even at Madras or at the Head Office where such centers are located, the petitioner could not be accommodated in as much as, after the liberalization policy introduced in the early 1990s, the very concept of banking had undergone a sea change and the petitioner was not acquainted with the same. It is also stated that the petitioner was not in a position to up-date his knowledge since it required extensive reading of circulars, books, communication and other visual aids. The aforesaid reasons put forth by the respondents, in justification of their inability to provide the petitioner alternate employment, cannot be said to so unreasonable as to violate Articles 14 and 16 of the Constitution of India. It must also not be lost sight of that, while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over administrative decisions. Unless the said decision is in violation of constitutional or statutory provisions, no interference is, normally, called for. Since the respondent bank has expressed its inability to accommodate the petitioner in an alternate job, and has given valid reasons in support thereof, this Court would not be justified in exercising its jurisdiction under Article 226 of the Constitution of India. It should also be taken note of that

the petitioner reached the age of superannuation of 60 years on 31.7.2002 itself and, as more than four years have elapsed since then, the question of now directing the bank to re-examine the feasibility of accommodating him in an alternate post does not arise.

There is, however, considerable force in the submission that, while the impugned order of compulsory retirement was passed on 24.11.1995, the said order was given retrospective effect from 1.4.1993. Similar to an order of punishment, an order of compulsory retirement comes into force only from the date on which it is passed and communicated to the delinquent employee and not prior thereto.

In **Bachhittar Singh Vs. State of Punjab**[19], the Supreme Court observed:-

> "……Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. **Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned**…….
>
> **……Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character**….." (emphasis supplied)

In **State of Punjab Vs. Khemi Ram**[20], the Supreme Court held:-

> "……..The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information. (Cf. *Shorter Oxford English Dictionary,* Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? **It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the**

person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab* v. *Amar Singh* (AIR 1966 SC 1313) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid……"

The respondent bank, in its letter dated 6.4.1993, has extracted the telex message received from the Head Office of the Bank which reads as under:

"Special Leave and full reimbursement of medical expenses to Shri Rao may be continued only till 31st March 1993. In case the health of Shri Rao more particularly the vision in his left eye (right eye being fully damage), is not restored he may be advised to seek voluntary retirement from Bank's service on medical grounds under Regulations' 19(1) of the UCO Bank Officers' Service Regulations, 1979 in terms of Bank's Circular No.CHO/POS/49/89 dated 27.12.89. As age of Shri Rao has not exceeded 55 years the benefit of giving employment to one of his dependents (who is a major) may be extended in terms of Bank's Circular No.SCL/16/83 dated 25.1.1983 in case he opts so.

In view of the fact that Shri Rao been treated as on duty and granted Special Leave since 18th June 1986 till 31st March 1993 the facility of compensation being made available to officer under Circular No.CHO/PMG/31/86 dated 29.12.1986 extended to Shri Rao on his seeking voluntary retirement"

The petitioner was informed that, in view of the afore-extracted instructions from the Head Office, no further special leave would be sanctioned to him with effect from 1.4.1993 and that the facility of full reimbursement of medical expenses would also cease from that date. The petitioner was also informed that no salary would be paid to him from 1.4.1993 onwards. It is clear from the above extracted telex message, of the head office of the respondent bank, that the petitioner was treated as "**on duty**" and was granted special leave from 18.6.1986 till 31.3.1993 and it is in such circumstances that the benefits of voluntary retirement compensation, as available under the respondent bank's Circular dated 29.12.1986, was to be extended to him if he sought voluntary retirement. The petitioner, even according to the respondents, was "**on duty**"

throughout till 31.3.1993. Even thereafter he was asked, vide letter dated 16.6.1994, to join duty and was informed that, after joining duty, if he was not able to render normal service to the bank, steps would be taken against him in accordance with the provisions of the Officers Service Regulations. Pursuant to the letter of the respondent bank dated 16.6.1994, the petitioner joined duty on 25.06.1994. He was informed, vide letter dated 25.6.1994, that his rejoining duties would be subject to the decision of the higher authorities of the bank. Thereafter, vide letter dated 29.6.1994, the petitioner was informed that, since his vision was completely lost, he was found not useful for a bank job, that a reference had been made to the higher authorities on the subject and that the petitioner would be conveyed their instructions on hearing from them and, till such time, the petitioner was advised not to report for duty at the Divisional Office from 30.6.1994 onwards. It is not in dispute that till the impugned order was passed on 24.11.1995, no action had been taken by the respondents to put an end to the contract of employment between the petitioner and the respondent-bank. It must, therefore, be held that the petitioner continued to remain in the service of the respondent bank even after 1.4.1993 till the order of compulsory retirement was passed on 24.11.1995.

The order of compulsory retirement came into force only from the date on which it was passed and communicated to the petitioner on 24.11.1995 and cannot be said to have retrospective operation from 1.4.1993 onwards. The principle of 'no work-no pay' has no application to the facts of the present case. It is also necessary to note that the power under Regulation 19(1) & (2) can be exercised to compulsorily retire an officer employee only when he reaches the age of 55 years or completes 30 years of service, whichever is earlier. The petitioner completed 30 years of service on 19.07.1994 and 55 years of age on 31.07.1997 and as such could not have been compulsorily retired from service prior thereto with effect from 01.04.1993. Till the order of compulsory retirement was passed on 24.11.1995, the master and servant relationship between the respondent – bank and the petitioner continued to remain in force and since the petitioner, despite his request, was prevented from attending work and no action was taken by the respondents to put an end to the contract of employment, the petitioner must be deemed to have continued in the service of the bank and to be entitled for all emoluments from 1.4.1993 till the order of compulsory retirement was passed on 24.11.1995.

Sri B. Nalin Kumar, learned counsel for the petitioner, would submit that, the three months substantive salary/pay and allowances to be given to an officer employee, before retiring him from service, is required to be calculated on the basis of the pay scales applicable, on the date on which the order of compulsory retirement was passed on 24.11.1995. Learned Counsel would submit that, since the three months pay and allowance was calculated and paid on the basis of the pay scales as applicable on 1.4.1993, the petitioner was not paid the three months pay and allowances as prescribed under the second proviso to Regulation 19(1) and as payment of three months pay and allowances is a condition precedent for compulsory retirement of an officer employee, failure in this regard would render the order of compulsory retirement abinitio void and the petitioner must be deemed to have continued in service till he attained the age of superannuation on 31.7.2002. Learned Counsel would contend that, as a result, the petitioner must be held to be entitled for full pay and allowances from 01.04.1993 till the date of his superannuation on 31.07.2002.

The second proviso to Regulation 19(1) cannot be said to be a condition precedent to an order of compulsory retirement nor can it be equated to Section 25-F of the Industrial Disputes Act. In this context reference may usefully be made to the judgment of the Full Bench of this Court in **K.V. Narasimha Rao Vs. Labour Court**[21]. Section 40 of the A.P. Shops and Establishment Act, 1966, which fell for consideration before the Full Bench, read thus:

"Conditions for terminating the services of an employee and payment of gratuity:- (1) No employer shall without a reasonable cause and except for misconduct, terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee, atleast one month's notice in writing or wages in lieu thereof land in respect of an employee who has been in his employment continuously for a period not less than 5 years, gratuity amounting to fifteen days average wages for each year of continuous employment."

The Full Bench of this Court in **K.V. Narasimha Rao**[21] observed:

"……It will be noticed from the aforesaid discussion of the various rulings that it is only in Sec.40 of the A.P. Shops Act, 1966 and in Sec. 25-F of the Industrial Disputes Act, 1947 that the statute is couched in prohibitory or negative language. Mere use of prohibitory or negative language does not necessarily lead to the conclusion that the conditions are conditions precedent. It is the intention of the legislature that is relevant. We have already given our reasons as to why in the former statute the word 'without' is to be read as not implying a condition precedent as opposed to the word 'until' used in the latter statute. The intention of the legislature in each case was, as pointed out, different. Cases covered by Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965 (before amendment in 1971) do not help us. It is true that even though that rule is not couched in prohibitory or negative language, it has been held that the use of the word 'forthwith by payment to him'

implied that such payment is a condition precedent for the validity of the termination. That was because of the intention of the Rule making authority in those cases. On the other hand, with reference to the amended Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965 as also Regulation 12 of the National Co-op. Development Corporation Service Regulations, 1975 and Rule (2) of the U.P. Temporary Government Servants Termination Rules 1953, it has been held that these rules/regulations are not intended to create any conditions precedent but are merely intended to create an entitlement; to receive the one month's pay and even if the payment is made subsequently, that did not, in any way, invalidate the order of termination. The provisions of the Sec. 40 of the A.P. Shops Act, 1966 are, in our view, also not intended to impose any conditions precedent…..

…….For all the aforesaid reasons, we hold that the condition of payment of one month's pay in lieu of one month's notice in Sec. 40 of the A.P. Shops Act, 1966 is not a condition precedent but that it merely creates a right to the said pay if not paid along with the order of termination…"

Similarly, the second proviso to Regulation 19(1) of the UCO Bank Officers Service Regulations, 1979 is also not a condition precedent and merely creates a right in an employee to be paid the said amount along with the order of termination. The petitioner shall, therefore, be entitled for payment of the differential amount, between the three months pay and allowances as prevailing on 24.11.1995 and the three months pay and allowances paid to him as on 1.4.1993.

Since this Court does not, normally, adjudicate disputed questions of fact in proceedings under Article 226 of the Constitution of India, I see no reason to go into the question as to whether the acid attack on the petitioner on 18.6.1986, when he was returning home from office, was directly related to his being appointed as an enquiry officer to conduct an enquiry into the irregularities alleged to have been committed by Sri S.S. Murthy. Since the petitioner's claim for compensation of Rs.20.00 lakhs would necessarily depend on an adjudication of these disputed questions of fact, these are all matters to be decided on the basis of evidence before the civil court of competent jurisdiction. It is made clear that this Court has not examined the petitioner's claim for compensation of Rs.20.00 lakhs. The orders now passed shall not preclude the petitioner from availing such remedies as are available to him in law, for payment of the compensation claimed by him ofRs.20.00 Lakhs.

The petitioner is entitled for full pay and allowances as an officer of the bank from 01.04.1993 till 24.11.1995, including revision in pay scales and arrears thereof. Since the petitioner was treated as "**on duty**", and not on medical leave, it must be held that he is also entitled for encashment of leave which had accrued to his credit on his being treated as "**on duty**". The

petitioner shall also be paid the differential amount between the three months pay and allowances prevailing as on 24.11.1995 and the three months pay and allowances paid to him based on the pay scales prevailing on 01.04.1993. Since the petitioner has been denied the amounts lawfully due to him, the aforesaid amounts shall carry simple interest at 8% per annum, calculated from the date on which the amounts fell due till the date of actual payment.

W.P. No. 21796 of 1995 is dismissed and W.P. No. 28824 of 1995 is allowed in terms of the aforesaid observations. However, in the circumstances, without costs.

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Date: .11.2006 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked
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MRKR/ASP

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[1] 1981(1) All Service Law Journal 188
[2] 1988(2) LLJ 370
[3] 1999(2) ALT 130
[4] 1983 (1) ALT 408
[5] AIR 1993 SC 1916
[6] 2004(2) SCC 130
[7] AIR 1954 SC 369
[8] (1987)2 SCC 188
[9] 1994 Supp(3) SCC 424
[10] (1992)2 SCC 299
[11] (2001) 2 SCC 305
[12] (2002) 3 SCC 641)
[13] (2003) 4 SCC 59)
[14] (1970) 2 SCC 458
[15] (2001) 3 SCC 314
[16] 1995 Supp (3) SCC 202
[17] Judgment in W.P.1368 of 1993 dated 17.8.1995
[18] (2006)3 SCC 620
[19] 1962 Supp (3) SCR 713
[20] AIR 1970 SC 214

[21] (1990(3) ALT 605